



David B. Cohen  
Mayor

## CITY OF NEWTON, MASSACHUSETTS

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Public Hearing Date: July 10, 2007  
Land Use Action Date: **T.B.D.**  
Board of Aldermen Action Date: September 17, 2007  
90-Day Expiration Date: October 8, 2007

TO: Board of Aldermen

FROM: Michael Kruse, Director of Planning and Development  
Nancy Radzevich, Chief Planner  
David Koses, Transportation Coordinator

DATE: July 6, 2007

SUBJECT: Petition #211-07 of 109 OAK STREET CONDOMINIUM TRUST, petition for a SPECIAL PERMIT/SITE PLAN APPROVAL for various parking waivers including the required number of stalls for a service establishment and number for office use; setback of dumpster; setback for parking from sideline; minimum stall width and length; maneuvering space for end stalls; minimum aisle width, one-way and two-way; perimeter screening; interior screening; lighting; and loading bay and for permission to use the entire basement for purposes other than storage, amending Board Orders #504-84 and #7-89, in connection with renovations to an existing parking facility in an existing building at 109 OAK STREET, Ward 5, NEWTON UPPER FALLS, Ward 5, on land known as Sec 51, Blk 46, Lot 1, containing approx 63,770 sf of land in a district zoned BUSINESS 1.

CC: Mayor David B. Cohen

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The purpose of this memorandum is to provide the Mayor, Board of Aldermen and the public with technical information and planning analysis which may be useful in the special permit decision making process of the Board of Aldermen. The Planning Department's intention is to provide a balanced view of the issues with the information it has at the time of the public hearing. There may be other information presented at or after the public hearing that the Land Use Committee of the Board of Aldermen will want to consider in its discussion at a subsequent Working Session.

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## EXECUTIVE SUMMARY

The petitioners are seeking an amendment to a special permit (Board Orders #504-84 and #7-89) to allow for use of the "basement" space (previously restricted for use as storage space only) for service and office uses and approval of various waivers to the Parking Ordinance. These include waivers to the number of required spaces; setback requirement for the dumpster and for parking stalls from the side lot line; minimum stall width and length; minimum maneuvering space for end stalls; minimum maneuvering aisle width for both one-way and two-way travel; perimeter and interior parking lot landscaping requirements; lighting; and the loading bay requirement. The subject property is improved with an existing 2-story (when viewed from Oak Street)/3-story (when view from the parking lot) office building, which was constructed in the mid-1980's, and currently includes two commercial condominiums.

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### I. BACKGROUND

The subject property was rezoned to Business A (renamed Business 1 in 1987) through Board Order #653-78(2). In conjunction with the rezoning, deed restrictions were placed on the property, per an Agreement document executed on February 12, 1979, which limited some of the potential uses on the site, included setback dimensions for buildings and parking areas, and required Site Plan Approval for any new construction or expansions. It is believed that the dimensional controls were included in this Agreement because the Zoning Ordinance, at that time, did not include dimensional and density requirements for commercially zoned areas. It does not appear that the City was a party to these restrictions, however, and as such may not have any legal interest in the conditions of this Agreement, other than already reflected in previous Board Orders, in combination with the Newton Zoning Ordinance.

In 1983, a building permit was issued for a "two-story office building with basement storage." During construction, the owner filed a request for a Special Permit for a waiver to the Parking Ordinance to allow for an increased percentage of compact spaces. At that time, the Zoning Ordinance allow for up to 10% of the total number of parking stalls, within a facility containing 50 or more stalls, to be designed for use by compact cars. The owner's request was to increase the total number of stalls, from 95 to 109, by restriping portions of the lot, and increasing the total number (8 to 38) and percentage (8.4% to 34.9%) of compact car spaces. In the technical review memorandum, the Planning Department noted that based on the Ordinance requirements, the original 95 spaces would be sufficient to cover the office uses that were permitted on the 1<sup>st</sup> and 2<sup>nd</sup> floors and speculated that the increase in total parking stalls was being proposed to try to convert the basement from storage to office space. (*SEE ATTACHMENT "A"*) The Board of Aldermen granted the waiver to allow for the increased number/percentage of compact stalls and approved a site plan with 109 stalls, but maintained a cap on the use of the building to be floor area that could be served by the original 95 stalls (*BOARD ORDER #504-84, SEE ATTACHMENT "B"*).

In 1989, the Board granted another Special Permit (*BOARD ORDER #7-89, SEE ATTACHMENT "C"*), which allowed an existing restaurant across the street at 108 Oak Street to use 35 parking stalls in the 109 Oak Street lot during the evening and night. This Board Order referenced a site plan that identified which of the 35 of the total 109 stalls could be used by the restaurant. It is worth noting that the current property owners have indicated that neither

of them have been parties to any auxiliary parking agreements. As such, it appears that the if Board Order #7-89 had been exercised, it is no longer in effect.

Over the years since, substantial alterations were made to the parking facility, without an amendment to the previous special permits and, apparently, without building permits, such that the lot now contains approximately 133 parking stalls (of which most, if not all, are substandard) without any interior landscaping. Further, the total number of handicap stalls has been reduced from the four originally proposed to two, which are located along the Sweet Street side of the site, adjacent to a dumpster, which had not been shown on any previously approved plans. In addition, it appears that through an expansion or further alteration of the paved parking area, a trailer, which was not shown on either prior approved plan, is currently sited on the west side of the building. *Regardless of whether this Special Permit is approved, the petitioners should remove the trailer from the site, as it has been determined to be a violation of the approved site plans by the Inspectional Services Department.*

In addition, although the 1984 Special Permit included a condition that effectively put a cap on the amount of the floor area that could be utilized, the then-Commissioner of Inspectional Services issued permits to allow for a "Curves" fitness center (Building Permit #217-04) and a "Gymboree" (Building Permit #1411-04) to build out and occupy space in the basement. Based on notes in the permit files, it appears that the then-Commissioner allowed these build-outs based on the 109 stalls approved through 1984 Board Order, even though the Board Order included a condition that effectively limited the amount of usable floor area to that which could be served by the 95 stalls approved through the 1983 by-right building permit.

In June 2005, the property was converted to a two-unit commercial condominium building. Unit 1 includes the basement (a/k/a "ground floor" or "lower level") and half of the first floor; Unit 2 includes the other half of the first floor and the second floor. According to the petitioner's attorney, Unit 1 currently includes the Curves and Gymboree on the basement level plus 6,750 square feet of vacant space for the new owner of Unit #1, the Children's Evaluation Center ("CEC"), and PR Management and a portion of the Argosy Publishing office on the 1<sup>st</sup> floor. Unit #2 includes Alexandra Construction (the principals of which are owners of Unit 2) on the other 1/2 of the 1<sup>st</sup> floor, and the balance of the Argosy Publishing offices on the second floor. (*SEE ATTACHMENT "D"*)

## II. ELEMENTS OF THE PETITION

The owners of the property are seeking an amendment to a Special Permit (Board Order #504-84) to legalize the use of the basement/lower level for service establishments (existing Curves and Gymboree) and office space (Children's Evaluation Center). In addition, the petitioners are proposing improvements to the parking lot and even though it will be more compliant with the current Parking Ordinance (Section 30-19), the petitioners are seeking several waivers to the Parking Ordinance including: a reduction in the required number of parking stalls (103 vs. the 138 required), relief from some of the dimensional controls (stall size, setbacks, maneuvering aisle width, etc.), reduction in the amount of interior landscaping, and reduction in the minimum 1 ft.-candling parking lot lighting requirement. The petitioner is also seeking amendments to the previously approved site plans (Board Orders #504-84 and #7-89).

### **III. ZONING RELIEF SOUGHT**

*Based on the Chief Zoning Code Official's zoning determination (SEE ATTACHMENT "E"), the petitioners are seeking relief from or approvals through the following sections of the Zoning Ordinance:*

- *Section 30-15, Table 3 & 30-19(m) — to allow for a reduction in the required parking setback requirement, from 10 ft. to 1± ft., for the placement of the dumpster pad and dumpster near the side lot line along the railroad right of way, which is in a Public Use zone, and to reduce the parking setback from 10 ft. to 9.1 ft. for parking space vehicle overhang at the side lot abutting a residential zone (MR1);*
- *Section 30-19(m) — allows the Board of Aldermen to grant a special permit for exceptions to the dimensional requirements for parking if it is determined that compliance is impracticable due to the nature of the site and that such exceptions would be in the public interest. The following waivers are required through this Section:*
  - Sec. 30-19(d)(10);(11) — for a waiver of 35 parking stalls to reduce number of required parking spaces from 138 to 103;*
  - 30-19(h)(2)a — Approval of dimensional requirements to reduce the width of 17 spaces from 9 ft. x 19 ft. to 8.5 ft. x 19 ft.;*
  - 30-19(h)(2)b — Approval of dimensional requirements to reduce the length of four (4) spaces from 9 ft. x 19 ft. to 9 ft. x 17 ft. at locations where the overhang conflicts with light poles;*
  - 30-19(h)(3)a — Approval of dimensional requirements to reduce the width of the maneuvering aisle from 24 ft. to 20.3 ft. and 22 ft., per plan, at designated locations, respectively, for one-way traffic;*
  - 30-19(h)(3)b — Approval of dimensional waiver to reduce width of circulation aisle from 24 ft. to 23.2 ft. per plan, at designated location for two-way traffic;*
  - 30-19(i)(2)a — Approval of a waiver of the 5% minimum interior landscaping to allow for 2.8% interior landscaping;*
  - 30-190 (1) — Approval of a waiver from minimum 1 ft.-candle light requirement to allow for a range of lesser illumination levels as shown on plan with photometric information;*
  - *30-19(l) — Approval of a waiver to eliminate the requirement for a loading bay.*
- *Section 30-23 and amendments to Board Order #504-84, Condition #1, and #7-89, Condition #1 — Site Plan Approval and amendments to prior approved site plans;*
- *Section 30-24 and amendments to Board Orders #504-84 — for a Special Permit and to allow for usable floor area at the basement (ground level), together with the requested parking waivers and amended site plans.*

### **IV. SIGNIFICANT ISSUES FOR CONSIDERATION**

*In reviewing this petition the Board of Aldermen should consider the following:*

- *Whether the waiver of 35 parking stalls, based on the existing and proposed uses, will have any adverse affects on the abutters or the immediate neighborhood.*
- *Whether waivers to the dimensional controls for some of the parking stalls and portions of the maneuvering aisles will adversely impact vehicular or pedestrians safety.*
- *Whether the reduced amount of interior parking lot landscaping is appropriate for the site and/or will have any adverse impacts on abutters.*
- *Whether the waiver to the 1 ft-candle minimum light levels will provide sufficient lighting levels to ensure safe vehicular and pedestrian movements through the site.*
- *Whether the amendment to previous Board Order to allow for increased usable floor area, through the legalization of uses other than storage in the basement (lower/ground level), is appropriate in relation to the number of on-site parking stalls proposed.*

## V. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

### A. Site

The 63,770 sq. ft. subject property is currently improved with a two-story commercial office building, with basement, and a 133 stall parking facility. The building is essentially a two- to three-story structure – with the existing topography the building appears to be two-stories from Oak Street, but three stories at the rear parking lot, due to the grade differential between front of the lot and the parking area.

Within the existing parking facility, most, if not all of the stalls are substandard. In addition, the layout is such to maximize the number of stall, without providing sufficient or convenient access for vehicles or pedestrians. Some of the existing maneuvering aisles are significantly substandard in width. Further, two of the drive aisles dead-end at the structure, which effectively forces drivers unable to find a parking space to back down the aisle, until there is a suitable location in which to turn around. The current parking lot is not designed to accommodate safe pedestrian access. Furthermore, the handicap stalls, of which there are only two, are not currently in compliance with the ordinance in terms of size and location.

Currently, one of the property owners has a trailer stored on site, which was not part of the approved site plan. Other than the trailer, much of the side yard space is sloped grassy yard, which is effectively currently underutilized.

The Planning Department notes that through Board Order #653-78(3) the Board of Aldermen approved a "conservation restriction" related to this site. ***Prior to or at the public hearing, the petitioner should provide information on how the current plans comply with the existing approved conservation restriction.***

B. Neighborhood

The subject property is located in Upper Falls, near Pettee Square and the Needham Street Commercial area. The site is abutted to the west by an abandoned railroad line and to the east and south by multi-family dwellings. Across Oak Street, to the east is a manufacturing plant with a large parking lot, to the north is Pettee Square and a small Newton Upper Falls shopping district. The Charles River is located south of the subject property, just beyond the abutting multi-family residences. The subject property along with one immediately across Oak Street and adjacent properties at the intersection of Oak and Chestnut Streets, are zoned Business 1. The property to the east across Oak Street is zoned Mixed Use 1. The properties to the west and south are zoned MR-1.



EXISTING OFFICE BUILDING AT 109 OAK STREET



EXISTING PARKING LOT AT THE REAR OF 109 OAK STREET

## VI. ANALYSIS

### A. Section 30-15 Dimensional Controls

Although no changes to the existing building are proposed, for informational purposes only, the following is a comparison of the existing structure in relation to the required setbacks for Commercial Buildings in a Business 1 District.

	REQUIRED	EXISTING	PROPOSED
Min. Lot Size	10,000 s.f.	63,766 s.f.	63,766 s.f.
Min. Setback			
Front (Oak St.)	10 ft.	<b>4.9 ft.</b>	<b>4.9 ft.</b>
Side			
East (Sweet St)	15 ft.	<b>9.9 ft.</b>	<b>9.9 ft.</b>
West ( <b>RR</b> )	14.89 ft. <sup>1</sup>	19.1 ft.	19.1 ft.
Rear	15 ft. <sup>2</sup>	234.5 ft.	234.5 ft.

<sup>1</sup> The required side setback is 1/2 the building height or a distance equal to the side yard setback of the abutting property at any given side yard, except, when abutting a residential zone, the setback shall be 1/2 the building height or 15 ft., whichever is greater.

<sup>2</sup> When abutting a residential or public use zone, the rear setback is 1/2 the building height or 15 ft., whichever is greater.

Max. # of Stories By Right By Special Permit	2 3	3	3
Max. Height By Right By Special Permit	24 ft. 36 ft.	29.78 ft.	29.78 ft.
Floor Area Ratio By Right By Special Permit	1 1.5	<i>Not Provided</i>	<i>Not Provided</i>

As the building pre-dates the current dimensional controls, the building is legal, non-conforming relative to the current front and side setback, and by-right height requirements, and the maximum permitted number of stories (by right). As the building is not being expanded, no information has been provided, nor required, related to the FAR.

**B. Section 30-19 -- Parking Requirements**

The following table compares the existing and proposed parking configurations with the requirements of Sections 30-19:

	<b>REQUIRED</b>	<b>EXISTING</b>	<b>PROPOSED</b>
MM. # of Stalls	138	<i>133 (only approved for 109)</i>	<i>103 (of which 4 are HG stalls)</i>
MM. Setbacks Front Side (Sweet St.) Side (RR)  Rear	5 ft. 10 ft. 5 ft.  10 ft.	122.6± ft. 11.9 ft. 1.4 ft.  11.8 ft.	127± ft. 9.1 ft. (w/2 ft. <b>overhang</b> ) 6 ft.-parking; 1 ft.- <b>dumpster</b>  11.8 ft.
Stall Width x Length Angled + 90°  Parallel	9' x 19'  9' x 21'	<i>?? Not on plans (per VTP Assoc.'s. nearly all are substandard)</i>	4 at 9' x 17'; 17 at 8.5' x 19'; 78 at 9' x 19'  2 @ 9' x 21'
Handicapped Stalls	4	2	4
Handicap stall size	12 ft. x 19 ft.	<i>?? not on plans</i>	<i>?? x 19' (width not on plans)</i>
Min. Maneuvering Aisle Width One-Way Two-Way	24 ft. 24 ft.	N/A 15.6 ft. -27.1 ft.	20.3 ft. - 22 ft. 23.2 ft. -24.4 ft.
Entrance/Exit Driveways	20 ft.-25 ft.	18.8-19.9 ft.	19.7-19.9 ft.
Landscape Screen	3 1/2 ft. high	<i>??? Not on plans</i>	Complies



evergreen			
Interior Landscape areas	5%	??? <i>Not on plans</i>	2.8%

The existing parking lot, in addition to being in violation of the approved Site Plan, does not comply with many of the current dimensional controls. With the proposed plans, the petitioner needs waivers from: the number of required stalls (103 vs. 138, required); side yard setback requirement for the 2 ft. overhang along Sweet Street; the minimum stall width for 17 spaces (8.5 ft. vs. 9 ft., required); the minimum stall length for 4 spaces (17 ft. vs. 19 ft., required); minimum maneuvering aisle width (min. of 20.3 for one-way and 23.2. for two-way vs. 24 ft. required for both); the minimum entrance driveway width (19.7 ft. vs. 20 ft.); and interior landscaping (2.8% vs. 5%, required). In addition, the petitioner has requested a waiver to the minimum 1 ft. candle lighting requirements. The submitted plans do not include the HC stall width, so the Planning Department is not sure if any waivers are needed these stalls. ***Prior to the public hearing, the petitioner should submit revised plans showing all relevant dimensions, and should update the list of requested waivers through 30-19(m), as necessary, on their application.***

Although the petitioner is seeking several waivers from the parking ordinance, with the current plans, the petitioner is attempting to bring as such of the parking facility into compliance as possible, while still providing as much on-site parking as possible.

#### C. Landscaping

Based on the submitted plans, it is not clear if any existing trees will be removed. ***Prior to the public hearing, the petitioner should submit a tree removal plan showing all trees to removed or if none are proposed to be removed, then a letter confirming that all existing mature trees will be retained.***

It appears that the petitioner is proposing to maintain most, if not all, of the existing vegetation, while adding additional landscaping in newly created landscape islands, along Sweet Street, along the front of the structure and in the newly defined "park" area on the west side of the building. This "park" area on the west side of the building provides a great improvement to the streetscape, in general, and an amenity to the users of this site. In addition to providing additional landscaping in this area, the petitioners have provided a new pedestrian walkway from Oak Street, to the rear of the site, with two seating areas incorporated in the pathway.

#### D. Site Lighting

The petitioner is seeking a waiver from the 1 ft-candle lighting requirement, to reduce the level of the parking lot lighting. Given that this site abuts residential properties to the east and south, the request to reduce light is reasonable. The submitted plans shows that there while there are a few areas where the light is just over 1.0 ft.-candle, generally the average lighting level is around 0.76. The lighting for all the drive aisles appears to be at least 0.5, which should be the minimum level to assure sufficient light for drivers to see pedestrians. ***The Planning Department notes that***

***the submitted plans show spill over light on the property lines; this should be reduced to 0 ft.-candles, particularly on the south and east property lines, which immediate abut residential properties.***

**E. Signage**

In his written zoning determination, the Chief Zoning Code Official indicates that the petitioners have not submitted a sign package, and the petitioners' attorney indicates that they are not proposing any new signage. The CZCO notes, however, that there are a number of existing informal and/or portable signs on the property and that the petitioners are responsible for ensuring that all existing signage is legal and property permitted. ***Prior to or at the public hearing, the petitioner should provide information on the existing signage, including evidence of proper permits, as appropriate, and/or should remove all illegal signage that does not comply with the Section 30-20 and/or was not properly permitted.***

**F. Relevant Site Plan Approval Criteria, Section 30-23**

**1. Convenience and safety of vehicular and pedestrian movement**

The petitioners are proposing to improve the safety of vehicular and pedestrian movement within the site parking lot by removing the current dead-end drive aisles, and creating a partial one-way circulation system. Vehicles will no longer be forced to back down the access aisle in order to turn around. Instead, the proposed site plan would enable vehicles to circle around the parking lot in a more straightforward, safer manner. Currently there are only two handicapped parking spaces, which block access to the dumpster. The petitioners are proposing to provide 4 handicapped parking spaces with conforming access aisles, at the closest location to the entry point of the building. Pedestrian access would be improved as well, as parking spaces will no longer block access to the basement (lower/ground level) door.

***The Assistant Fire Chief and Assistant City Traffic Engineer are expected to submit a written reviews, under separate cover.***

**2. Adequacy of the methods for disposal of sewage, refuse and other wastes and of the methods of regulating surface water drainage**

The Associate City Engineer has reviewed this petition. (SEE ATTACHMENT "F")

**3. Screening of Parking Areas**

With the existing vegetation and proposed new plantings, the Planning Department believes that the parking areas will be sufficiently screened from abutters.

**4. Avoidance of major topographical changes**

The proposed project includes only minor topographical changes to accommodate the two new stalls, dumpster and the two new seating areas along the west side of the site.

G. Relevant Special Permit Criteria

1. The specific site is an appropriate location for such use.

A commercial office building has existed on this site since the 1980's, however, the petitioners are seeking to allow for more of the existing building space to be utilized for uses other than storage. In effect, the petitioners are seeking to legalize the two exiting uses in the basement, Gymboree and Curves, and allow for further build-out of the basement, for offices for the Children's Evaluation Center.

Whether the increase in usable floor area is appropriate for this site is tied to whether the site meets the parking demand for the increased uses. The petitioner has provided a parking study, related to the addition of the Children's Evaluation Center (CEC) and legalization of the Gymboree and Curves. Other than data regarding the number of cars parked on-site during the study period, no information on the parking requirements of the other current tenants is not included in this document (such as office hours, whether tenant businesses attract clients to the site and, if so, how many on an average day). *The Planning Department believes this information is critical as the operations of all existing and proposed tenants should be evaluated in consideration of a 35 stall parking waiver, as the Board may want to add specific conditions, if this Special Permit is granted, related to the existing uses and the justification for the waiver. Prior to the close of the public hearing, the Planning Department believes that an updated study needs to be submitted that provides a complete analysis of the existing site demands and uses in relation to the proposed uses.*

Based on the information submitted so far, the petitioners indicate that on most days, during the mid-day period, there were anywhere from 59 to 102 vehicles parked on-site. This is based on the current level of occupancy, with the Gymboree and the Curve spaces occupied, but with the balance of the basement area vacant. The high number 102 was documented back in 2006; it is not clear if any operational or staffing changes had occurred after this peak. Further, the two low numbers (59 occupied at 1pm on May 21<sup>st</sup> and 61 spaces occupied at 11 am on May 29<sup>th</sup>) were documented at times that may not be reflective of the total uses. The May 21<sup>st</sup> data was collect around 1pm, and this low number may be reflective of people being out at lunch; the May 29<sup>th</sup> data was collected the day after Memorial Day, and may reflect a reduced number of persons on-site, through extended holiday. The Planning Department would suggest that the remaining data, which is much more consistent, may be a better representation of the parking demand during the mid-day period. The number of occupied spaces during those dates ranged from 70 to 94 vehicles.

Based on this information, it appears that there will *typically* be sufficient excess parking available during the mid-day, for the existing and the proposed CEC use, which the petitioners indicate would be up to 10 spaces, however, there are instances where it was observed that there were more than 93 spaces occupied and, as such, there will be times when there will be a potential parking shortage, on-site, during mid-day.

The Planning Department notes that the parking study submitted, strictly focused on mid-day observations and does not include information on the number of parking spaces that are occupied before 10am or after 3pm. While the submitted information indicates that there will be generally between 6-9 employees of the CEC on-site during the day, there is no indication of when their expected peak times are in relation to potential peak parking times on site. For example, do all the clinicians arrive on site at 9am, then begin their consultations either on or off site? How does the peak parking times for CEC relate to peak parking demands for other uses on the site? Further there is not sufficient information on how the CEC peak parking demands coincide with the parking demands for the other uses, through out the course of the day.

*While there will apparently be some slight parking during the mid-day, there is insufficient information as to whether parking shortages are expected in the morning or evenings, and the extent of those potential shortages. The Planning Department does not believe this petition can be sufficiently reviewed without additional information on parking demands for all uses, through the course of the day, and the expected and/or typical peak parking demand numbers and times for each of the existing and proposed uses. **Prior to or at the public hearing the petitioners should provide more information on the anticipated parking demand in the parking lot and on Sweet Street, for all existing and proposed uses, through out the course of a typical day, and the expected and/or typically peak parking demand, in terms of numbers of vehicles and time of day, for all existing and proposed uses.***

While the petitioner has indicated that up to 9 additional vehicles could be parked on along Sweet Street, the Planning Department does have some concerns about the use of Sweet Street for overflow parking.

Sweet Street is a private way and, as such, immediate abutters own the street up to the centerline in front of their properties. While the petitioner indicates that Sweet Street has a 40' wide right-of-way, and can accommodate up to nine (9) vehicles, the Planning Department measured the width of Sweet Street as anywhere between 19' (at its midpoint) to 27' (near the Oak Street Condominium dumpster, located across from the parking lot entrance). There is curbing on the north/west (office) side of Sweet Street but not on the south/east (residential).

If overflow parking were to occur on the north/west (office) side of Sweet Street, it is the judgment of the Planning Department that residents may no

longer be able to safely park on their side of the street, in front of their properties. If vehicles were to park across from one another, the Planning Department is concerned that Sweet Street would become too narrow to allow safe passage for snow removal, refuse, fire and other emergency vehicles. While it is not clear how often or how many vehicles may be parked on the residential side of Sweet Street, during a recent site visit, the Planning Department observed a vehicle parked on the south/east (residential) side of the street, as shown in the photo below.



The Planning Department believes that if parking were to be encouraged on the office side of Sweet Street, parking would need to be restricted on the residential side of Sweet Street. It is not clear how this might impact residents along Sweet Street.

The Planning Department points out that the Oak Park Condominium dumpster is currently located at the end of Sweet Street, directly across from the entrance to the 109 Oak Street parking lot. The petitioner should provide information showing that any additional parking on Sweet Street would not interfere with the ability of a truck to maneuver to and from the dumpster. Finally, the Planning Department notes that Sweet Street provides a pedestrian path between the Oak Park Condominiums and Oak Street. There is no sidewalk on Sweet Street, and by encouraging parking on Sweet Street, pedestrians who walk in the street may experience a narrowing of the road. ***Prior to the public hearing, the petitioner should discuss the potential for parking along only one side of Sweet Street, with the immediate abutters, to see if such a plan would be agreeable and/or if reasonable accommodations for parking on both sides can be made, without adversely impacting convenient and safe vehicular and pedestrian travel along this private way.***

It should be noted that the CEC is presently located at 193 Oak Street, and that this would represent an expansion of their existing use vs. relocation. Currently, they have 18 deeded spaces in the Village falls garage, primarily for staff. In addition, clients can use the visitors parking facility on Oak St. On any given day there are about 12-15 employees on site, at their 193 Oak Street location, as many employees work at home or in the field, in client's homes or at schools. According to the owners of CEC, in their current operation, they have never exceeded their parking capacity nor have there been any complaints from, or to, the Condominium Association. ***At the public hearing, the petitioner should discuss whether any overflow parking for the CEC staff could be accommodated at their existing site.***

2. The use as developed and operated will not adversely affect the neighborhood.

As long as the parking demand does not significantly exceed the number of spaces on site and as long as any such increases could be accommodated on a short-term basis along Sweet Street, then the proposed amendment to the special permit should not adversely impact the neighborhood. *However, the Planning Department does not believe that the submitted parking study provides sufficient information on the parking demands for all the existing and the new uses, throughout the course of the day, and at peak times.*

***Prior to or at the public hearing, the petitioner should provide the additional information on the parking demand for the existing and proposed uses, throughout the course of a typical day, along with the number of vehicles and times for typical peak parking of each use. In addition, the petitioner should consider whether the schedules of the existing users can be coordinated and/or alternative access provided to the site such that there will not be any parking shortages.***

3. There will be no nuisance or serious hazard to vehicles or pedestrians.

*As previously noted the submitted plans include significant improvements for vehicular and pedestrian movements on-site, vs. what currently exists. [See also comments in VI. and VI. G.1., above.]*

4. Access to the site over streets is appropriate for the type(s) and number(s) of vehicles involved.

*Additional information is needed as to whether encouraging overflow parking along Sweet Street will have any adverse impacts on vehicular or pedestrian movements along that private. [See also comments in VI.F.1. and above.]*

## VII. SUMMARY

The owners of the property are seeking an amendment to a Special Permit (Board Order #504-84) to legalize the use of the basement/lower level for service establishments (existing Curves and Gymboree) and office space (Children's Evaluation Center). In addition, the petitioners

are proposing an amendment to the approved site plan and improvements to the existing parking facility. Even though it will be more compliant with the current Parking Ordinance (Section 30-19), the petitioners are seeking several waivers to the Parking Ordinance including: a reduction in the required number of parking stalls (103 vs. the 138 required), relief from some of the dimensional controls (stall size, setbacks, maneuvering aisle width, etc.), reduction in the amount of interior landscaping, and reduction in the minimum 1 ft.-candling parking lot lighting requirement.

The petitioners are proposing to improve the safety of vehicular and pedestrian movement within the site parking lot by removing the current dead-end drive aisles, and creating a partial one-way circulation system. The petitioners are also proposing to provide 4 handicapped parking spaces with conforming access aisles, at the closest location to the entry point of the building. The Planning Department believes that the proposed changes to the parking lot will greatly improve pedestrian and vehicular movements throughout the site.

In addition, the petitioner is proposing to increase the amount of landscaping in the parking lot, of which there is none, as well as around the site. One of the most dramatic improvements to the site will be the removal of the trailer, on the west side of the building, and the creation of a "park," with a pathway from Oak Street to the parking area, two seating areas, and additional landscaping. This will improve the streetscape and will provide a great amenity to the users of this site.

While the Planning Department believes the proposed changes to the site will be improvements, with the request to increase the intensity of the use of the building, through formally allowing use of the basement area, the petitioner is seeking a 35 stall waiver. Although a parking study was submitted, the Planning Department is concerned that the study was limited and shows that with the addition of CEC, there will likely be times when there will be slight parking shortages, *during the mid-day*. The study does not provide sufficient information on the parking demands for all the existing and the proposed uses throughout the course of the day, nor the expected and/or typical peak parking demands, for each use, based on number of vehicles and time of day. *As such, at this time, the Planning Department believes there is insufficient information to provide the Board with a clear understanding of the expected frequency and extent of parking shortages, through out the course of the day.*

Although the petitioner has indicated that there may be the ability to accommodate some overflow parking on Sweet Street, it is not clear, how often and to what extent, overflow parking may be needed. Further, the Planning Department is concerned that parking along the office side of Sweet Street, may limit the residents from be able to park on their side of the street. Alternately, as Sweet Street is a private way, if parking is accommodated on both sides, with any regularity, given the width of the roadway, safe and convenient access for larger vehicles, including snow plows, fire trucks and other emergency vehicles may be restricted.

***Prior to the close of the public hearing, the Planning Department believes that an updated study needs to be submitted that provides a complete analysis of the existing site demands and uses in relation to the proposed uses. Such study the petitioner should provide the additional information on the parking demand for the existing and proposed***

*uses, throughout the course of a typical day, along with the number of vehicles and expected times for peak parking demands for each use. In addition, the petitioner should consider whether in schedules of the existing users can be coordinated and/or alternative access provided to the site such that there will not be any parking shortages. Further, the updated study should include information on the anticipated parking demand on Sweet Street, based on the need for 109 Oak overflow parking, in relation to expected parking demands of the adjacent residents, and how both parking needs can be accommodated without impacting the safety and convenience of vehicular and pedestrian traffic along this private way. Any such plans for parking along Sweet Street should be developed in consultation with residents.*

*In addition, to the above, the petitioner should address all other issues raised by staff either at the public hearing or prior to the working session, as appropriate.*



## ATTACHMENT A

### CITY OF NEWTON, MASSACHUSETTS



CITY HALL

1000 COMMONWEALTH AVENUE

NEWTON CENTRE 02159

TELEPHONE (617)552-7135

DEPARTMENT OF PLANNING AND DEVELOPMENT BARRY C. CANNER, DIRECTOR

Public Hearing:

September 10, 1984

Board of Aldermen Action Date:

December 3, 1984

90 Day Expiration Date:

December 9, 1984

#### MEMORANDUM

TO: Mayor Theodore D. Mann  
Board of Aldermen  
Planning and Development Board

FROM: Barry C. Canner, Director of Planning and Development

SUBJECT: Petition #504-84 of Jack J. Antaramian requesting a SPECIAL PERMIT under Sec 30-21(m) of the Zoning Ordinances to allow for exceptions to the provisions of Sec 30-21(h)(2)(iii) to increase permitted compact stalls from 8 (109) to 38 on land located off Oak Street, Ward 5, Section 51, Block 46, Lot 1 containing approximately 63,770 square feet in Business A district.

Recommendation: Approval, subject to condition

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#### I. ELEMENTS OF THE PETITION

The petitioner is proposing to increase the number of parking stalls in a parking facility under construction from 95 to 109 by restriping various portions of the lot to increase the number of compact cars. The restriping would create 38 compact, 67 standard size and 4 handicapped stalls in place of an originally proposed 8 compact, 83 standard and 4 handicapped stalls.

Section 30-21(h)(2)(iii) provides that up to 107 of the parking stalls, in facilities containing 50 or more stalls, may be designed for use by compact cars and that said stalls must be clearly identified with signs. Section 30-21(m) also provides that, in accordance with Section 30-29, the Board of Aldermen may grant exceptions to the requirements of Section 30-21 of the Zoning Ordinance where literal compliance is "...impractical due to the nature of the use—or that such exceptions would be in the public interest, or in the interest of safety".

#### II. BACKGROUND

In 1974 the site was rezoned from the Manufacturing to the Business AA District. At the same time the parcel to the west was placed in the Private Residence District. In recognition of the site's non-residential potential and the apparent need to limit the range and intensity of *use* on the site, the 1979 rezoning to the Business A District included execution of a deed restriction which would limit the uses of the land and would provide for site plan and design review. In recognition of the site's proximity to residential uses, the deed restriction prohibited more intensive uses such *as* hotels and places of assembly and established building and parkins setback to\_\_

### III. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

#### A. Site

The site, which contains 63,770 s.f., is located on Oak St. in Pettee Square, Newton Upper Falls. The site contains a 2-story office building, (3 stories from the parking lot side) presently under construction. A surface parking facility with access from Sweet Street will be located behind the building.

#### B. Neighborhood

The site is abutted to the north by railroad tracks and the Pettee Square commercial area, to the south by single family dwellings, to the west by a 38 unit townhouse development and across Oak St. to the east by commercial and manufacturing activities (St. Regis Paper Co.).

The zoning of the subject site is Business A. The zoning of the commercial properties to the north across the railroad tracks are also in the Business A District. The properties to the south and west are within the Private Residence District. Across Oak Street, to the east, is the Manufacturing District.

### IV. ANALYSIS

#### A. Land Use Consideration

Building permits for the office building were issued in December, 1983 for a two-story office building with storage in basement. Based on the submitted plans, the parking requirements are as follows:

1st floor (office)	10,466 n.s.f. - 200 s.f.	52.33
2nd floor (office)	10,823 n.s.f. - 300 s.f.	36.07
basement		
(storage)	10,409 n.s.f. - 2500 s.f.	4.16
	4 employees ( <i>est.</i> )	1.
		<hr/> 93.56

The originally proposed 95 parking spaces would be adequate for the above schedule of uses.

Should the special permit to provide 109 parking spaces be approved, *this* would allow conversion of approximately 6000 s.f. of *basement floor area* (the area which contains windows) to office space.

This additional amount of office space would result in an increase of approximately 34% pf traffic generated by the site (291 vehicle trips vs. 392 vehicle trips)i.

However, it should be noted that, as originally proposed the office building would have contained approximately 50,000 s.f. and included two levels of parking (200 parking spaces).

## **B. Technical Considerations**

The submitted plans show an increase of 14 parking spaces (from 95 to 109). The plans revise the existing layout by the provision of 38 compact car spaces. This represents an increase from 8.4% to 35% of the total spaces in the parking lot.

Section 30-32(h) (iii) of the Zoning Ordinance provides that parking facilities may utilize 10% of the total spaces for compact vehicle use (7'x17'). Since passage of this ordinance in 1977, the ratio of compact to standard vehicles has changed. For example, a review of a number of parking lots in the City` suggests that a range from 20% to 50% is more representative. However, it should be noted that, on some occasions one standard size vehicle took up two compact stalls with the result that the increased number of spaces available for parking was minimized. To offset this inefficiency of use, appropriate parking management techniques should be utilized and the number of compact stalls should not exceed 25%.

Another local study of vehicle sizes was the December, 1979 "Traffic Impact and Analysis Study, Marriott Hotel Complex", by Alan M. Voorhees & Associates, Inc., Transportation Consultants, Boston, *Mass.* The study covered a three-day period in December. For the three days samples, the percentage of compact/subcompact vehicles ranged from a low of 30.5% to a high of 36.2%. Of the 965 total vehicles surveyed over the three days, 33.2% were compact/subcompact cars.

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<sup>1</sup> 23,660 g.s.f. @ 12.3 vehicle trips/1,000 g.s.f. 291  
basement 8200 g.s.f. @ 12.3 vehicle trips/1,000 g.s.f. 101

<sup>2</sup> Based on Planning and Development staff site visits on 4/9/80 which indicated:

	Number Compact	Total Number	Percent Compact
1 Wells Avenue	14	<b>60</b>	23
20 Wells Avenue	31	90	34
100 Wells Avenue	31	62	50
160 Wells Avenue	11	26	42
199 Wells Avenue	35	100	35
Glen Avenue (Oldco)	13	62	21
	135	400	33

C. Landscaping

As the submitted plan makes adjustment to the previously approved landscaping plan, revised plans should be submitted.

V. CONCLUSION AND RECOMMENDATION

The proposed re-design to provide 109 parking spaces would include 35% (38) compact stalls. This increased number of spaces would allow conversion of the basement from storage to office space. At the same time increasing the number of compact stalls would be consistent with recent trends. However, to offset inefficient use of these stalls, no more than 25% should be converted for compact use. It is therefore recommended that the petition be approved, subject to the following condition.

1. That a revised, site and landscaping plan which provides *no* more than 25 percent compact stalls should be submitted to and approved by the Director of Planning and Development.

AGREEMENT

WHEREAS, WHDH Corporation ("WHDH") is the owner of a certain parcel of land, being all of Assessor's Lot 1 and a portion of Assessor's Lot 5, Block 46, Section 51, in Ward 5 of the City of Newton consisting of 63,770 square *feet*; and

WHEREAS, said parcel, together with adjoining land also owned by is the subject of a sale contract dated January 21, 1978 between WHDH, as Seller, and Antaramian Realty Construction, Inc., as Buyer ("Antaramian"); and

WHEREAS, WHDH has petitioned the Newton Board of Aldermen to change the zoning classification of said parcel from Business AA to Business A in order that said parcel may be used for retail sales purposes,

NOW, THEREFORE, for consideration paid, receipt of which by each of the parties hereto is hereby acknowledged, WHDH and Antaramian agree as follows:

1. In the event that the City of Newton approves said zone change, then, unless otherwise approved by the *Newton* Board of Aldermen, WHDH, its successors and assigns, shall not, under any claim or right of authority *as* the result of said zone change (as authorized by Board Order No. 653-78(2), approved February 5, 1979), use any building or structure on all or a portion of said parcel or *any* alteration, enlargement or extension thereof for any of the following purpose::

- (a) theater, hall or club;
- (b) **funeral** home;
- (c) hotel;
- (d) job printing establishment;
- (e) apartment houses or apartment hotels;
- (f) any uses and accessory purposes permitted by the Newton Zoning Ordinance *in effect* on February 5, 1979, in residence D districts, which do or do not require the permission of the Board of Aldermen.

2. *No* construction or use of land for purposes otherwise permitted in a Business A district; no building, structure or alteration, enlargement or extension thereof; and no landscaping or sign shall be constructed or altered upon said parcel unless a site plan showing the location of such buildings, parking areas, driveways, landscaping or sign shall have been first approved by the Planning Director of the City of Newton or his successor, with the advice of the Urban Beautification Commission or its designated successor pursuant to Article XVIII of the **Revised** . Ordinances of Newton (1973) as *in effect* on February 5, 1979; such approval shall not be unreasonably withheld and shall be issued within 60 days of the date of submission of **said site** plan. In the event that the Planning Director shall not approve said site plan as originally submitted (or *as* modified by mutual agreement) within said 60 days, said site plan shall be submitted to the Newton Board of Aldermen for approval in accordance with the procedural requirements of then applicable municipal and state law.

3. The following set back distances shall apply to buildings and parking areas upon said parcel:

from Oak Street - 5 feet;

side yard from any adjoining residential zone - 10 *feet*;

from Sweet Street - 10 feet:

from the railroad property line - **no parking within 5 feet;**  
**a building** may be set at the property line.

4. The provisions of this agreement shall be binding upon WHDH, its successors and assigns and shall be construed as covenants running with the land, until such time as the Newton Board of Aldermen establishes another zoning classification for said **parcel**. No owner of said parcel shall be liable for any breach of the Provisions hereof not occurring during such owner's ownership thereof.

Executed under seal this 11<sup>th</sup> day of February, 1979.

WHDH Corporation

Witness 4 01...\$...= 1

BY: Barbara J. Mahoney <sup>4</sup> fee Vice President & Treasurer  
Antaramian Realty & Construction Inc.

Witness                     

Jack Antaramian hi Aytfily & e  
By            Jack Antaramian, President

COMMONWEALTH OF MASSACHUSETTS

February 12 - 1979

Then personally appeared the above-named Barbara J. Mahoney as aforesaid, and acknowledged the foregoing instrument to be the free act and deed of WHDH Corporation, before me

Notary Public

My commission expires <sup>p</sup> 1 S S

COMMONWEALTH OF MASSACHUSETTS

..7y i 40

• 1979

Then personally appeared the above-named Barbara J. Mahoney as aforesaid, and acknowledged the foregoing instrument to be the free act and deed of **Antaramian Realty & Construction, Inc., before me.**

otary Pd li                                          

My commission expires: 6/7 Vity

For title reference see deed of S. W. Industries dated 8/15/70 and recorded in Middlesex South District Registry of Deeds in Book 1877 Page 3.

## ATTACHMENT B

#504-84  
(653-78(2))

CITY OF NEWTON

IN BOARD OF ALDERMEN

October 1, 1984

ORDERED:

That the Board finding that the public convenience and welfare will be substantially served by its action and that said action will be without substantial detriment to the public good, and without substantially derogating from the intent or purposes of the Zoning Ordinance, the following SPECIAL PERMIT is hereby granted, in accordance with the recommendation of the Land Use Committee and the reasons given by the Committee therefor through its Chairman, Alderman Cynthia Creem

Petition number: 504-84

Petitioner: Jack J. Antaramian

Location: Oak Street, Ward 5, Section 51, Block 46, Lot 1, containing approximately 63,770 square feet.

Owner: Jack J. Antaramian

Address of owner: 1087 Beacon Street, Newton Centre, MA 02159

To be used for: **Parking Facility of which 35 Percent of total stalls to be compact vehicle stalls accessory to an office building.**

Explanatory note: Section 30-21(n) of the Revised Zoning Ordinances permits the Board to grant exceptions to the parking ordinance. In this case (Section 30-21h(2)(iii), a parking facility to contain more than 10 percent parking stalls designed for compact cars.

Land referred to is in Business "A" District

Approved, subject to the following conditions:

1. That, except as may be amended below, the accessory parking facility shall be constructed consistent with a plan entitled "Revised Parking Plan, Newton Ma., Oak St., dated May 1, 1983 and revised to 12-21-83" by Barnes Engineering Company, 411 Lexington Street, Auburndale, submitted by the petitioner and filed herewith.
  - a. That a revised landscaping plan reflecting the changes in the revised parking plan as cited above shall be submitted to the Director of Planning for approval.
2. **That no portion of this parking facility shall be used to satisfy the zoning requirements of other lots or parcels in the area.**
3. That the additional parking stalls resulting from the redesign of the parking facility for the increased compact parking stalls shall not be used to satisfy the parking requirements for additional floor area greater than that permitted by the existing 95 parking stalls.
4. There shall be no exercise of this SPECIAL PERMIT until:
  - a. The petitioner shall have recorded with the Registry of Deeds for the Southern District of Middlesex County a certified copy of this Board Order granting this SPECIAL PERMIT with appropriate reference to the book and page of the recording of the petitioner's title deed or notice of lease endorsed thereon.
  - b. A certified copy of such recorded notice shall have been filed with the City Clerk,, the Building Department and the Department of Planning and Development.
  - c. **The petitioner shall have complied with all requirements of the Massachusetts State Building Code, including obtaining appropriate permits from the Building Department, and said Department shall have filed, with the City Clerk and the Department of Planning and Development, a statement certifying thereto.**

Under Suspension of Rules

Readings Waived and SPECIAL PERMIT

Granted

21 yeas, 0 nay, 2 absent (Ald. Daley &  
Robinson) 1 excused (Ald. McGrath)

EXECUTIVE DEPARTMENT  
APPROVED  
October 3, 1984

(Sgd) EDWARD G. ENGLISH, CITY CLERK (Sgd) THEODORE D. MANN, MAYOR



The undersigned hereby certifies that the foregoing copy of the decision of the Board of Aldermen granting a SPECIAL PERMIT is a true, accurate and complete copy of said decision; that all statutory requirements for the issuance of SPECIAL PERMIT have been complied with; and that copies of the foregoing decision all plans referred to in the decision have been filed with the Planning & Development Board and the City Clerk.

Twenty days have elapsed since the date of filing of the Board Order with the City Clerk and no appeal thereto has been filed.

  
City Clerk

(Date) August 4, 1984

TO THE HONORABLE BOARD OF ALDERMEN  
City of Newton

.44-J4 ,yY

Gentlemen:

The undersigned hereby makes application for permit to erect and use, to alter and use, or to make such use as may be hereinafter specified, of buildings or buildings, at the location and for the purpose herein-after specified, under the provisions of Chapter 30 of the Revised Ordinances, 1979 (Zoning Ordinance), or any other sections, viz:

Petition for: SPECIAL PERMIT

(Check One)

I: • t% : 4? N -

SITE PLAN APPROVAL

Located as follows:

Street and Ward Oak Street Ward 5

Section (s) 51

Block (s) 46

Lots (s) 1

Approx. Square Footage 63,770

To be used for: variance from parking ordinance as follows:

	Handicapped	Compact	Regular
Required	4	8	83
Construction: Requested	4	38	67

Explanatory Remarks: **Petitioner in construction commercial building** under zoning and wishes to change number and configuration of Land referred to here is in (Zone) Business District. parking.

The undersigned agrees to comply with the requirements of the Zoning Ordinance and rules of the Land Use Committee of the Board of Aldermen in connection with this application.

Signature of Petitioner

Address & Phone

~~Rauckx Raiimammitrm~~ Wrmst

Jack J. Antaramian, Trustee

Attorney of Record

Address & Phone

Peter F. Harrington

505 Waltham Street, Newton 02165

244-1015

Name & Address of

Owner of Property

~~Raickx Raiisx Amanagxkkmq~~ Jack J. Antaramian

10517 R<sup>2</sup>arnn Street

N<sup>2</sup>wtnn r<sup>2</sup>ntr<sup>2</sup> 09159

BUILDING COMMISSIONER'S ENDORSEMENT

DEPARTMENT OF 6//04'e  
PLANNING AND DEVELOPMENT  
CITY HALL  
1000 Commonwealth Avenue  
NEWTON, MASSACHUSETTS 02159

RESERVED FOR BINDING - DO NOT WRITE IN THIS SPACE

THE COMMONWEALTH OF MASSACHUSETTS  
NEWTON  
wry

# 504-84

BOARD OF ALCM=

October 22 19 84

NOTICE OF VARIANCE

Conditional or Limited Variance or Special Permit

(General Laws Chapter 40A. Section 18 as amended)

Notice is hereby given that a Conditional or Limited Variance or Special Permit has been granted

To Jack J. Antaramian  
Owner or Petitioner

Address.....MZ..fi<sup>g</sup>a<sup>g</sup>sm Street, Newton Centre, MA.....

City Eewton Center, M?ssachusetts 02159 on land located at Oak Street,  
51, Block 46, Lot 1 containing approximately 63,770 sq. ft.  
Identify Land Affected

by the .Cityof Newton Board of Aldermen affecting the  
rights of the owner with respect to the use of premises on.

Oak Streets Newton. 142ner.....MA Q2,1S14  
swam

City

the record title standing in the name of

Jack J. Antaramian

whose address is .....laa7...B.e.a.c.on. S.treEt.,...Newton..Gentre,../.1A. ....  
Street City State

by a deed duly recorded in the .....County Registry of Deeds in Book

..... Page ..... Registry District of the Land Court

Certificate No ..... Book ..... Page .....

The decision of said Board is on file with the papers in Decision or Case No #504-84  
in the office of the City Clerk of Newton

Signed this...22n.d.day of ..... Gc\_tob.ex..... 19 84

Board of Aldermen

.....President  
CAROL ANN SHEA Board of Aldermen

.....Clerk  
EDWARD G. ENGLISH BOard of Aldermen

..... 19 ..... at ..... o'clock and ..... minutes ... M.

Received and entered with the Register of Deeds in the County of .....  
Book ..... Page .....

ATTEST

Register ol Deeds

|||||\*|||||NNNNNMINIII

J n

# ATTACHMENT C

(#504-88)

CITY OF NEWTON

IN BOARD OF ALDERMEN

June 19, 1989

ORDERED:

That the Board finding that the public convenience and welfare will be substantially served by its action and that said action will be without substantial detriment to the public good, and without substantially derogating from the intent or purpose of the Zoning Ordinance, the following SPECIAL PERMIT/SITE PLAN APPROVAL is hereby granted in accordance with the recommendation of the Land Use Committee and based upon the following specific findings, facts and conclusions, and the reasons given by the Committee therefor through its Chairman, Susan M. Basham:

1. That the lease of the land for off-site accessory parking in evening and nighttime hours will not adversely affect the business or residential neighborhood;
2. That the lease of the land will allow the restaurant expansion at 108 Oak Street which provides a service for the community.

Petition number: 7-89

Petitioner: Salvatore A. Balsamo, Technical Aid Corporation

Location: 108 Oak Street, Ward 5, Section 51, Block 46, Lot 1, containing approximately 63,700 square feet

Owner: Grand Hoosic Realty Trust

Address of Owner: 109 Oak street  
Newton, Massachusetts 02164

To be used for: accessory parking (35 spaces) in conjunction with petition 7-89(2) for expansion of restaurant at 108 Oak Street.

Construction: Paint the designated spaces for accessory parking

Explanatory note:                   A SPECIAL PERMIT is required to strike Condition 2 of Board Order #504-84 which prohibits use of the parking facility to satisfy parking requirements for other off-site uses.

Land referred to is in:    Business 1 District

Approved, subject to the following conditions:


1.   That, except as amended below, the parking stalls, driveway, maneuvering aisles, fence, and other site features shall be located consistent with the plan entitled "Composite Parking for Proposed Expansion Jesse's Junction" by Dooling and Company Architects, Inc., dated June 6, 1989.
2.   That all conditions of Board Order #504-84 shall remain in full force and effect except as amended below.
3.   That Condition 2 of Board Order #504-84 be struck, allowing for the evening and nighttime accessory parking of thirty-five (35) vehicles, satisfying the zoning requirement for the restaurant expansion at 108 Oak Street.
4.   That there shall be no exercise of this SPECIAL PERMIT until:
  - (a)   The 35 spaces referred to in Condition 1 are indicated on the lot;
  - (b)   The fences as referred to in Condition 13 of Board Order 7-89(2) are installed.
  - (c)   The Petitioner shall have recorded with the Registry of Deeds for the Southern District of Middlesex County a certified copy of this Board Order granting this SPECIAL PERMIT/SITE PLAN APPROVAL with appropriate reference to the book and page of the recording of the Petitioner's title deed endorsed thereon.

- (d) A certified copy of such recording shall have been filed with the City Clerk, the Department of Inspectional Services and the Department of Planning and Development.

Under Suspension of Rules  
Readings Waived and Approved  
23 yeas 0 nay 1 absent  
(Ald. Carmichael)

The undersigned hereby certifies that the foregoing copy of the decision of the Board of Aldermen granting a SPECIAL PERMIT and SITE PLAN APPROVAL is a true accurate copy of said decision, the original of which having been filed with the CITY CLERK on June 21, 1989. The undersigned further certifies that all statutory requirements for the issuance of such SPECIAL PERMIT and SITE PLAN APPROVAL have been complied with and that all plans referred to in the decision have been filed with the Planning and Development Board and the City Clerk.

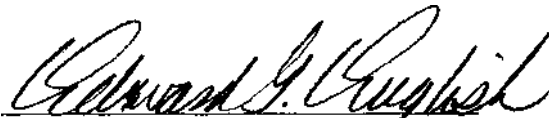
ATTEST:



(SGD) EDWARD G. ENGLISH, City Clerk  
Clerk of the Board of Aldermen

I, Edward G. English as the Clerk of the Board of Aldermen and keeper of its records and as the City Clerk and official keeper of the records of the CITY OF NEWTON hereby certifies that Twenty days have elapsed since the filing of the foregoing decision of the Board of Aldermen in the Office of the City Clerk on June 21, 1989 and that NO APPEAL to said decision pursuant to M.G.Laws Chapter 40, Section 17 has been filed thereto.

ATTEST



EDWARD G ENGLISH, Ci Clerk

**109 Oak Street, Newton, MA**  
**Proposed and Existing Use by Floor**

**EXISTING - Ground Floor**

Tenant	Square Footage	Use
Curves	1,640 square feet	Service
Gymboree	2,542 square feet	Service
Vacant	6,570 square feet	Office
Common Area	1,720 square feet	

**EXISTING - First Floor**

Tenant	Square Footage	Use
Alexandra Construction	7,200 square feet	Office
PR Management	1,226 square feet	Office
Argosy Publishing	2,488 square feet	Office
Common Area	1,872 square feet	

**EXISTING - Second Floor**

Tenant	Square Footage	Use
Argosy Publishing	11,933 square feet	Office
Common Area	552 square feet	

**PROPOSED - Ground Floor**

Tenant	Square Footage	Use
Curves	1,640 square feet	Service
Gymboree	2,542 square feet	Service
Children's Evaluation Center	6,570 square feet	Office
Common Area	1,720 square feet	

**PROPOSED - First Floor**

<b>Tenant</b>	<b>Square Footage</b>	<b>Use</b>
<b>Alexandra Construction</b>	7,200 square feet	Office
PR Management	1,226 square feet	Office
Argosy Publishing	2,488 square feet	Office
Common Area	1,872 square feet	

**PROPOSED - Second Floor**

Tenant	Square Footage	Use
Argosy Publishing	11,933 square feet	Office
Common Area	552 square feet	

## *Zoning Review Memorandum*

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Dt: May 25, 2007

To: Stephen J. Buchbinder, Esq., representing CEC Oak Realty, LLC

CC: Michael Kruse, Director, Department of Planning and Development  
John Lojek, Commissioner of Inspectional Services

Fr: Juris Alksnitis, Chief Zoning Code Official



**Re: Request to alter parking area, increase usable gfa; amendment of related board orders.**

**Applicant(s): CEC Oak Realty, LLC**

Site: 109 Oak St.

SBL: Section 51, Block 46, Lot 1

Zoning: Business-1

Lot Area: 63,770 sq. ft.

Current use: Office and service uses

**Prop. use:** Office and service uses

**Background:**

The subject office building was constructed commencing with building foundation permit issued in the fall of 1983 for a commercial building with office space and a basement level largely for storage only. During construction, the owner requested a parking waiver allowing a higher number of compact spaces than available under the Zoning Ordinance of that day. Board Order #504-84, October 1, 1984 authorized the increase in compact parking spaces leading to a higher total number of spaces (109), but maintained a cap on use of the building at a level commensurate with such floor area as could be served by the original 95 parking spaces. B.O. #504-84 also required that the parking facility be developed consistent with an approved plan referenced in Condition 1. Subsequently, the Board of Aldermen granted a special permit under B.O. #7-89 authorizing evening use of 35 spaces by a restaurant across the street. B.O. #7-89, Condition 1 referenced a new parking plan identifying the location of these 35 spaces within a parking lot containing approximately 109 spaces. More recently, the building has been turned into two commercial condominium units, and the current owners now seek to utilize the office building to a greater extent while also revising the parking facility. As a result, various parking waivers are requested and the alteration of previously approved plans together necessitate Board of Aldermen review and approval.

**Administrative determinations**

1. The subject property is governed by the requirements of B.O. #504-84, arch B.O. #7-89, together with Section 30-15, *Table 3, Dimensional Requirements for Commercial Districts (Table 3)*, and parking requirements established in Section 30-19. Existing conditions in



the parking facility reflect changes, which have occurred over time and are no longer consistent with previously approved plans. In addition, internal use of the building has substantially expanded within the basement level, where two fitness establishments are now operating. The current owners seek to increase allowed use of building floor area, update and improve the parking facility, and provide additional landscaped space to be available for general use. The preceding will necessitate review and approval by the Board of Aldermen as discussed below.

2. Deed restrictions per the Agreement document executed Feb. 12, 1979, were enacted for this site in conjunction BO. #653-78(2) rezoning the subject locus to Business A (renamed Business 1 in 1987). These requirements were apparently instituted as the Zoning Ordinance of that day did not contain dimensional and density requirements, such as later adopted by the City in 1987 for commercially zoned areas. The applicant's attorney believes the setbacks listed within Section 3 of the Agreement continue in effect today. Review of submitted plans and summary table provided by the applicant indicates that existing conditions vary in minor respects from these setbacks. The effect of new proposed parking changes in relation to these setbacks is discussed in #6., below.
3. Board Orders #504-134, October 1, 1984 and #7-89, June 19, 1989 approved the initial and subsequent plans of record, which govern the subject site, and parking area in particular. Over time, the parking area was substantially altered without benefit of special permit or building permit, and parking spaces increased to 133. The current proposal seeks to return the parking area to compliance with the applicable requirements and standards articulated in Section 30-19. As part of the proposed plans, the number of spaces would be reduced to 103 from the previously authorized 109, along with improvements in circulation and landscaping. Such alterations necessitate amendment of the above-referenced board orders, subject to approval by the Board of Aldermen. In addition, the owners propose to increase the usable area on the ground floor, which in turn increases the required number of parking spaces.
4. When originally approved, the existing commercial office building had available floor area on the ground floor (basement) level, which was largely limited to storage due to lack of sufficient on-site parking. B.O. #504-84, which approved a waiver for an increase in the number of compact spaces (such spaces are no longer available under Section 30-19), in Condition #3 specifically limited usable floor area to "...floor area [not] greater than that permitted by the existence of 95 parking stalls". As the applicant seeks to increase usable floor area within the building, this necessitates amendment of B.01504-84 revising or eliminating Condition #3, subject to approval of the Board of Aldermen.
5. Section 30-19(d), *Number of Parking Stalls*, subsections (d)(10) and (d)(11) establish the required number of parking stalls for service and office uses, respectively. When parking was calculated back in 1984, then applicable parking ordinance provisions utilized net rentable floor area as basis. Since adoption of Ordinance S-260, August 3, 1987, gross floor area has been required in parking calculations. Based on information submitted by the applicant, the number of parking spaces required per the current ordinance for the subject building would be as follows depending on usage:

- (d)(11) All office, with total gfa: 37,743 sq. ft.  $[20,000/250 = 80 + 17,743/333 = 54] = 134$

• <u>(d)(10) Service</u> (two establishments), and <u>remaining in (d)(11) office use:</u>	
o Curves: [1640 sq. ft./300= 6+ 3 max empl./3 = 1] =	7
o Gymboree: [2542 sq. ft./300=9+ 3 max. empl/3 = 1] =	10
o Net office, less service establishments: [80+13,561/333=41] =	121
	138

The applicant represents that the figures provided above are actual gross floor area.

Based on the above, the applicant will need a waiver of the required parking spaces ranging from 31[134-103] to 35 [138-103] pursuant to Section 30-19(m). The above waiver may possibly be reduced to some degree provided use of the ground floor is again limited to such extent as may be approved by the Board of Aldermen.

6. Section 30-19(h), *Design of Parking Facilities*, establishes the design and layout requirements applicable to parking facilities of this size. It is noted that the proposed 4 HP stalls meet the requirements stated in (h)(2)c) as to number and dimensional parameters. Submitted plans indicate a layout which will necessitate various dimensional waivers per Section 30-19(m) as follows:

- (h)(2)a) - For reduced stall width of 8.5 ft – 17 spaces
- (h)(2)b) – For reduced stall length of 17 ft. – 4 spaces; to accommodate bumpers protecting lights
- (h)(3)a) – For reduced circulation aisle widths of 20.3 ft and 22 ft. for one-way traffic
- (h)(3)b) – For reduced circulation aisle width of 23.2 ft. for two-way traffic

7. Section 30-19(h)(1) together with Table 3 establish the setback requirements pertaining to parking facilities. The concluding "Note" to Table 3 requires a minimum 5 ft. setback unless abutting a residential or Public Use zone, in which case a minimum of 10 ft. is required: The subject site is located adjacent to a railroad right of way, which along with other unzoned property was placed in the Public Use zone in 1987. It is noted that the perimeter of the existing parking facility was laid out and also approved pursuant to B.O. #504-84 prior to adoption of Table 3 requirements in 1987 and prior to adoption of the Public Use zone. Currently proposed changes to the prior parking plan include two new parking spaces between the office building and railroad right of way and the placement of a dumpster on a concrete pad nearby within a fenced enclosure. The location of the two new parking spaces meets Table 3 setback requirements. Relocation of the existing dumpster from its present location at the southwest corner of the building and its placement within approximately 3 ft. of the side lot line necessitates a waiver per Section 30-19(m), and approval to amend prior plans of record authorized per B.O. #504-84 and #7-89 to the extent necessary. In addition, submitted plans propose a new curved 3 ft. retaining wall in back of the proposed dumpster. As the new curved wall is to be connected to the existing concrete retaining wall, the proposed improvement is an extension of the existing wall located very near the side lot line as shown on plans approved by prior Board Orders, referenced above. As a result, the proposed wall needs approval by the Board of Aldermen as an amendment to prior plans of record.

In addition, the deed restriction Agreement required certain parking setbacks of 5ft. and 10 ft., respectively. Proposed parking changes would only affect the side=d setback of 10 ft. associated with an adjacent residential use, where proposed vehicle overhangs will encroach within this setback to 9.1 ft. It is suggested the applicant address and resolve

any legal considerations as may arise in this situation. As the Table 3 setback of 10 ft. applies here as well, the proposed parking space overhang encroachment requires approval of a waiver by the Board of Aldermen per Section 30-19(m).

8. Table 3 establishes the setback requirements pertaining to buildings and structures in the BU-1 zone. Plans and information provided by the applicant indicate a proposed landscaped picnic/walking area between the building and railroad right of way including a stone wall functioning as a retaining wall and sitting wall. Section 30-15(m), as interpreted by prior rulings of the Zoning Board of Appeals, requires that structures must conform to applicable setback requirements, in this case a side setback of 14.9 ft. Placement of structures within the required side yard setback would typically necessitate dimensional variances from the Zoning Board of Appeals. However, the approximately 3 ft. high fieldstone retaining/sitting wall shown between the railroad right of way and the picnic area will serve as a public amenity. As it is a low decorative wall and amenity, it does not require zoning relief, although located approximately within 3 ft. of the side lot line. In addition, plans propose several 34.5" high light posts placed along the walkway and located within the 14.9 ft. side setback. These light posts meet the typical bollard height level of 3 ft. and are not considered structures subject to setback requirements.
9. Section 30-19(i)(1) and (2), *Landscaping*, establish the respective perimeter screening and interior landscaping requirements applicable to parking areas. Submitted plans for the revised parking area meet these requirements for perimeter screening. However, as the interior landscaped areas will total 2.8%, the plan falls short of the 5% requirement set forth in (i)(2)a). The applicant may take steps to attain conformance with Section 30-19Ci)(2), or may seek a waiver from the Board of Aldermen per Section 30-19(m). New landscaped sitting areas and a walk conforming to HP requirements are provided along the north side of the building for general use. It is noted that a letter from the landscaper dated May 11, 2007 states that no trees are to be removed in conjunction with the proposed landscape plan.
10. Section 30-19(j) *Lighting*, establishes the applicable lighting requirements for parking areas. Recently provided photometric information indicates that various parts of the parking facility will be illuminated at levels less than 1 foot candle, necessitating a waiver from the Board of Aldermen per Section 30-19(m). In addition, the applicant is responsible for meeting the requirements of Ordinance X-142, *Light Ordinance*, as set out in sections 20-23 through 20-28 pertaining to light pollution and light trespass in relation to the subject site.
11. Section 30-19(k) *Bicycle Parking Facilities* establishes the bicycle parking requirements for parking facilities having more than 5 spaces. While submitted plans indicate a suitably located rack, parking capacity is not indicated. The applicant's attorney states that the capacity will be for 11 bicycles, which meets bicycle parking requirement associated with the subject parking facility.
12. Section 30-19(1), *Off-street Loading Requirements*, establishes the applicable off-street loading requirements and requires one loading bay for a building of this size. Submitted plans indicate no provisions for an external loading bay. As the applicant seeks elimination of the internal loading bay with no provision for a replacement loading bay, this necessitates a waiver from the Board of Aldermen per Section 30-19(m).

13. Section 30-20 establishes the applicable sign requirements. While no information has been provided pertaining to signage for the commercial establishments within the subject building, the applicant must comply with applicable sign procedures and permitting requirements. As a number of informal signs and portable signs are located on the property, the applicant is responsible for ensuring that any illegal signs are removed and that permanent signs are duly submitted for sign permitting. It is suggested the applicants work out a building sign program meeting the recommendations of the Urban Design and Beautification Commission, and if necessary, seek such special permit pursuant to Section 30-20(1) as may be indicated. In addition, while the parking plan locates several directional signs, further sign details are needed to determine whether the signs conform to Section 30-20(f)(8) size requirements.
14. Various plans lack the respective stamp and signature of a registered professional preparing the plans and certifying required calculations and dimensions. The applicant is responsible for providing stamped and signed plans not later than at the time of filing the petition with the Clerk of the Board of Aldermen.
15. See "Zoning Relief Summary" below.

<i>Ordinance</i>	<i>Zoning Relief Summary</i>	<i>Action Required</i>
	<b>Building</b>	
30-24 BO 504-84 Cond. #3	Approval to amend Cond. #3 to increase usable floor area on ground level, together with parking waivers noted below.	x
	<b>Parking</b>	
30-19(d)(10);(11) 30-19(m)	Approval of waiver of 35 spaces to reduce number of required parking spaces from 138 to 103	X
30-19(h)(2)a) 30-19(m)	Approval of dimensional waiver to reduce width of 17 spaces from 9 ft. x 19 ft. to 8.5 ft. x 19 ft.	x
30-19(h)(2)b) 30-19(m)	Approval of dimensional waiver to reduce length of 4 spaces from 9 ft. x 19 ft. to 9 ft. x 17 ft. at light poles.	x
30-19(h)(3)a) 30-19(m)	Approval of dimensional waiver to reduce width of circulation aisle from 24 ft. to 20.3 ft. and 22 ft., per plan at designated locations, respectively, for one-way traffic.	x
30-19(h)(3)b) 30-19(m)	Approval of dimensional waiver to reduce width of circulation aisle from 24 ft. to 23.2 ft. per plan at designated location for two-way traffic.	x
30-19(i)(2)a) 30-19(m)	Approval of waiver to reduce interior landscaping below 5% minimum to 2.8%.	X
30-19(j)(1) 30-19(m)	Approval of waiver to reduce illumination from 1 ft.-candle to a range of lesser illumination levels as shown on plan with photometric information	X
30-19(1) 30-19(m)	Approval of waiver to eliminate loading bay.	

<b>Zoning Relief Summary (cont.)</b>		
<b>Ordinance</b>		<b>Action Re</b>
	<b>Parking (cont.)</b>	
30-15, Table 3, Note 30-19(m)	Approval of dimensional waiver to reduce parking setback from 10 ft. to 3 ft. for placement of dumpster pad and dumpster near side lot line along railroad right of way in Public Use zone.	X
30-15, Table 3, Note 30-19(m)	Approval of dimensional waiver to reduce parking setback from 10 ft. to 9.1 ft. for parking space vehicle overhang at side lot line abutting a residential zone (MR-1).	X
	<b>Signage</b>	
30-20	See Item 13., above.	
	<b>Site</b>	
30-23 BO#504-84, Cond. 1; BO#7-89, Cond. 1	Approval of revised site plan including revised parking layout, lighting, landscaping, curved retaining wall extension, dumpster, and a new landscaped sitting area with walkway on 'north side of building.	
	<b>Special Permit</b>	
30-24 BO#504-84, Cond. 1; BO#7-89, Cond. 1	Amend Condition 1 incorporating such revised site plan modifying parking, lighting, dumpster, and landscaping, etc., as approved by the Board of Aldermen.	X

**Plans and materials reviewed:**

- Board Order #504-84, October 1, 1984
- Board Order #7-89, June 19, 1989, and accompanying plan.
- Deed restriction Agreement, dated February 12, 1979
- Letter from Kattman Corporation, May 11, 2007
- Letter from VTP Associates, May 15, 2007 with interior landscaped area calculation.
- Plan titled "Topographic Plan of Land, Newton, MA, Showing Proposed Conditions at #109 Oak St.", last revised March 24, 2007, prepared by VTP Associates Inc., Land Surveyors – Civil Engineers, 132 Adams St., 2<sup>nd</sup> Floor, Suite 3, Newton, MA 02458, stamped and signed by James J. Abely, Professional Land Surveyor.
- Plan titled "Detail Sheet, Newton, MA, Showing Details at #109 Oak St.", dated March 24, 2007, prepared by VTP Associates Inc., Land Surveyors – Civil Engineers, 132 Adams St., 2<sup>nd</sup> Floor, Suite 3, Newton, MA 02458, stamped and signed by James J. Abely, Professional Land Surveyor.
- Plan titled "Topographic Plan of Land, Newton, MA, Showing Proposed Conditions at #109 Oak St.", last revised January 4, 2007, showing illumination levels and light posts, prepared by VTP Associates Inc., Land Surveyors – Civil Engineers, 132 Adams St., 2<sup>nd</sup>

Floor, Suite 3, Newton, MA 02458, bearing neither stamp nor signature of a registered professional.

- Plan titled "Landscape Plan, 109 Oak Street, Newton, MA", dated March 22, 2007, prepared by Kattman Corporation, Landscape Architects, 24 Water St., Holliston, MA, 01746, bearing neither stamped nor signature of a registered professional.
- Plan set titled "109 Oak Street Condominium, Newton, MA", dated June 20, 2004, prepared by R. Dinneen Architects & Planners, Inc., 160 North St., Boston, MA 02114, stamped and signed by Ralph E. Dinneen, Registered Architect, consisting of the following:
  - Sheet 1 of 5 — Ground Floor Plan
  - Sheet 2 of 5 — First Floor Plan
  - Sheet 3 of 5 — Second Floor Plan
  - Sheet 4 of 5 — Roof Plan
  - Sheet 5 of 5 — Site Plan

**CITY OF NEWTON  
ENGINEERING DIVISION**

**MEMORANDUM**

To: Alderman George Mansfield, Land Use Committee Chairman

From: John Daghljan, Associate City Engineer

Re: Special Permit — 109 Oak Street

Date: June 29, 2007

CC: Lou Taverna, PE City Engineer (via email)  
Nancy Radzevich, Chief Planner (via email)  
Linda Finucane, Associate City Clerk (via email)  
Alexandra Ananth, Planner (via email)

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In reference to the above site, I have the following comments for a plan entitled:

*Topographic Plan of Land  
Showing Proposed Conditions at 109 Oak Street  
Newton, MA  
Prepared by: VTP Associates Inc.  
Dated: November 7, 2006  
Revised: January 4, 2007  
March 24, 2007*

Drainage:

- Since there is only a minor amount of impervious surface added and the existing drainage system is be retrofitted with gas traps, no additional on site improvements are needed.

Water:

- The applicant needs to confirm with the Newton Fire Department if the building has, or needs to update the fire suppression system.

Sidewalks & Pedestrian Ramps:

1. The typical City sidewalk standard is 5-feet in width, the proposal indicates 4-foot wide sidewalks. Although Sweet Street is a private way, a five-foot wide sidewalk is preferred due to the fact that during the winter, a 1' wide snow bank would restrict the sidewalk to 3' wide, for this reason 5 feet is preferred.
2. Due to the tight radius of the driveway entrance, the proposed cement sidewalk thickness should be 8" within the rounding portion of the sidewalk, this would allow trucks to drive over the sidewalks without damaging the concrete.
3. In accordance to the Architectural Access Board's Regulations, reciprocal curb cuts are required opposite the two proposed ramps; specifically at the southeast corner of Sweet Street, and easterly on Oak Street.

General:

1. All tree removal shall comply with the City's Tree Ordinance.
2. The contractor is responsible for contacting the Engineering Division and scheduling an appointment for inspections of the construction of the sidewalks, ramps, etc.
3. The applicant will have to apply for a Utilities Connecting permit with the Department of Public Works prior to any construction. *This note must be incorporated onto the site plan.*
4. The applicant will have to apply for a Building permits with the Department of Inspectional Service prior to any construction.
5. Prior to Occupancy permit being issued, an As-Built Plan shall be submitted to the Engineering Division in both digital format and in hard copy. The plan should show all utilities and final grades, any easements and final grading. *This note must be incorporated onto the site plan.*
6. If a Certificate of Occupancy is requested prior to all site work being completed, the applicant will be required to post a Certified Bank Check in the amount to cover the remaining work. The City Engineer shall determine the value of the uncompleted work. *This note must be incorporated onto the site plan.*

If you have any questions or concerns please feel free to contact me @ 617-796-1023.